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**Jackie Gulland**

**'Fitting themselves to become wage-earners': conditionality and incapacity for work in the early 20<sup>th</sup> century**

**Abstract**

Welfare reform in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries has been characterised by an increase in the conditions applied to benefits claimants, particularly for claimants of incapacity benefits. It is often claimed that conditions have traditionally been applied to claimants of unemployment benefits, who are considered to bear some individual responsibility for improving their position, while those claiming incapacity benefits have been regarded as less individually responsible. This article, based on an analysis of disputes about sickness benefits in the early years of the 20<sup>th</sup> century, shows that such conditionality is not new. Understanding the socially constructed nature of definitions of incapacity for work, including the often unwritten conditions attached to these definitions can help us to understand the debate in welfare reform today.

**Introduction**

Recent welfare reform in most countries has been accompanied by an increase in conditionality: both in the depth of conditions to which individual claimants are subject and in the spread of conditions to new groups of claimants<sup>1</sup>. While ‘jobseekers’ are expected to make greater attempts to find work, conditions on claims have been extended to lone parents, carers and people with work-limiting health conditions. This extension of conditionality tells us much about how claimants are viewed, as Paz-Fuchs argues, ‘conditionality encapsulates the legal attitude towards entitlement’, changing the relationship between claimants and the state from one of entitlement to one of reciprocity where ‘obligations counter-balance rights’<sup>2</sup>. Other writers have looked at this extension of conditionality in the late 20<sup>th</sup> and early 21<sup>st</sup> century, arguing that this has arisen since the 1990s and noting in particular the extension to people claiming incapacity benefits.<sup>3</sup> In the UK Employment and Support Allowance (ESA) was designed to treat almost everyone as a potential worker, with work-seeking conditions attached to benefit payments for all except those with the most severe disabilities<sup>4</sup>. Paz-Fuchs argues that behavioural conditionality relies on a distinction between those who are capable of

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<sup>1</sup> OECD. "Sickness, Disability and Work: Breaking the Barriers. A Synthesis of Findings across OECD Countries." (Paris, OECD, 2010 ); Van Berkel, R. "The Provision of Income Protection and Activation Services for the Unemployed in 'Active' Welfare States: An International Comparison." (2010) 39 *Journal of Social Policy* 17-34.

<sup>2</sup> Paz-Fuchs, A. *Welfare to Work Conditional Rights in Social Policy*. (Oxford: Oxford University Press, 2008), p1.

<sup>3</sup> Eg Bamba, C. and Smith, K. ““No Longer Deserving? Sickness Benefit Reform and the Politics of (Ill) Health in the UK.” (2010) 20 *Critical Public Health* 71–84.; Barker, N. and Lamble, S. “From Social Security to Individual Responsibility: Sanctions, Conditionality and Punitiveness in the Welfare Reform Bill 2009 (Part One) — Current Developments.” (2009) 31 *Journal of Social Welfare and Family Law*: 321-32.; Bonner, D. “Employment and Support Allowance: Helping the Sick and Disabled to Return to Work?” (2008) 15 *JSSL*: 123-50, Grover, C., and Piggott, L., "From Incapacity Benefit to Employment and Support Allowance: Social Sorting, Sickness and Impairment, and Social Security." *Policy Studies* 31, no. 2 (2010): 265-82.; Harris, N. “Reducing Dependency? Conditional Rights, Benefit Reform and Drugs.” (2010) 37 *Journal of Law and Society*,

<sup>4</sup> DWP. *No One Written Off: Reforming Welfare to Reward Responsibility Cm7363*. (Norwich: TSO, 2008).

changing their situation: usually young, able-bodied, unemployed adults; and those who are not: usually old people, children and those who are considered too ill to work<sup>5</sup>. Although behavioural conditionality assumes that people are capable of making such changes, it individualises problems which exist in wider social contexts and there is considerable debate as to whether behavioural conditions are effective.<sup>6</sup> While this definition of conditionality concerns the behaviour of benefit claimants, Clasen and Clegg have considered conditionality more widely, showing that benefits have three types of conditionality attached to them, which they describe as 'levers'. They describe these levers as concerning: 'category' 'circumstance' and 'conduct'.<sup>7</sup> Category conditions concern how people qualify for benefits, for example by age, or social circumstance such as unemployment or being unfit for work and Clasen and Clegg remind us that these categories are social constructions, liable to changes in definition.<sup>8</sup> 'Circumstance' conditions concern legislative requirements such as contribution conditions, means-testing, waiting days etc, while 'conduct' conditions concern the types of behavioural conditions usually associated with the term conditionality<sup>9</sup>. Variation in any of these levers affects the numbers and categories of people eligible for particular benefits. Along with increases in behavioural conditionality, we have seen changes in both the category and circumstance levers for people claiming incapacity benefits. ESA narrowed the

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<sup>5</sup> Paz-Fuchs, A. *Welfare to Work Conditional Rights in Social Policy*, p45.

<sup>6</sup> Wright, S.. "Welfare to Work, Agency and Personal Responsibility." (2012) 41 *Journal of Social Policy*.

<sup>7</sup> Clasen, J., and Clegg, D. "Levels and Levers of Conditionality: Measuring Change within Welfare States." In *Investigating Welfare State Change: The Dependent Variable Problem in Comparative Analysis*, edited by Clasen, J. and Siegel, N.. (Cheltenham: Edward Elgar, 2007), p171.

<sup>8</sup> Clasen, J., and Clegg, D. "Levels and Levers of Conditionality: Measuring Change within Welfare States." , p172

<sup>9</sup> Clasen, J., and D Clegg. "Levels and Levers of Conditionality: Measuring Change within Welfare States." , p173-174.

eligibility rules and introduced new tough tests<sup>10</sup> so that large proportions of claimants are found to be fit for work.<sup>11</sup> Changes in circumstance levers can most clearly be seen in the planned removal of contributory ESA for long term claimants in the Welfare Reform Bill 2011.<sup>12</sup> This has been accompanied, on the one hand, by government rhetoric that people should be 'saved' from the dependency of claiming benefits and, on the other, by a flood of media allegations that unsuccessful claimants are workshy scroungers.<sup>13</sup> Despite tabloid allegations that the new assessment mechanisms identify fraudulent claims, it is clear that the new mechanisms simply move the goalposts, or in Clasen and Clegg's terms, change the levers, in determining who is and is not capable of work.<sup>14</sup>

However, concerns about whether people are 'really' incapable of work and issues of conditionality and deservingness go right back to the forerunners of the welfare state, most notoriously in the poor law's attempts to differentiate between the deserving and undeserving poor.<sup>15</sup> While the early history of social security in the UK has been studied at length, most writers on behavioural conditionality in its early years have concentrated

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<sup>10</sup> For a discussion of the detail of the new tests, see Bonner, D. "Employment and Support Allowance: Helping the Sick and Disabled to Return to Work?" (2008) 15 *J SSL*: 123-50.; Rahilly, S. "Employment and Support Allowance: More Fine Tuning of the Incapacity Tests and the End of Incapacity Benefit." (2010) 17 *JSSL* 137-40.

<sup>11</sup> 24% of claimants were awarded ESA between October 2008 and 2011, while 38% were found fit for work and 36% of claims were 'closed before assessment was completed' DWP. *Employment and Support Allowance Work Capability Assessment Official Statistics October 2011*, available at [http://research.dwp.gov.uk/asd/workingage/esa\\_wca/esa\\_wca\\_25102011.pdf](http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_25102011.pdf). [accessed February 2012].

<sup>12</sup> Welfare Reform Bill 2011, s51

<sup>13</sup> Briant, E., Watson, N., Philo, G. and Inclusion London. *Bad News for Disabled People: How the Newspapers are Reporting Disability*. (Glasgow: Strathclyde Centre for Disability Research and Glasgow Media Unit, 2011).

<sup>14</sup> Beatty, C. and Fothergill, S. *Incapacity Benefit Reform: The Local, Regional and National Impact*. (Sheffield: Centre for Regional Economic and Social Research, 2011).

<sup>15</sup> Harris, N. "Beveridge and Beyond: The Shift from Insurance to Means-Testing." In *Social Security Law in Context*, edited by Harris, N. (Oxford: Oxford University Press, 2000); Paz-Fuchs, A. *Welfare to Work Conditional Rights in Social Policy*.

on unemployment benefits<sup>16</sup> but we can find evidence of debates about assessing capacity for work and of conditionality in the first state sickness insurance scheme in the UK in 1911 and it is to this scheme that this article now turns.

### **The 1911 National Insurance Act**

The sickness benefit insurance scheme introduced by the National Insurance Act 1911 was a compulsory scheme, whereby those, aged between 16 and 70, earning less than £160 a year, were required to make weekly contributions, supplemented by contributions by their employers and the state. In return they would receive sickness benefit for up to 26 weeks of certified sickness, followed by ‘disablement benefit’, which was paid at half the rate. The scheme also provided members with the right to treatment by a ‘panel’ doctor, although not, in most cases, to hospital treatment. These panel doctors were responsible for providing the initial medical certification for sickness benefits. Although a state scheme, the day to day administration was carried out by ‘approved societies’: friendly societies, trade unions and industrial societies, which were also able to provide additional benefits if they chose to do so. In 1914 2608 societies had been approved to

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<sup>16</sup> Eg Deacon, A. *In Search of the Scrounger*. (Leeds: University of Leeds, 1976); Paz-Fuchs, A. *Welfare to Work Conditional Rights in Social Policy*.

run the scheme, with memberships ranging from under 100 to hundreds of thousands.<sup>17</sup> By 1926, the scheme had 15,000,000 members, administered by 1000 approved societies, varying in size from 50 members to 2 million.<sup>18</sup> The 1911 scheme's insurance-based model was intended to provide a rights-based alternative to the poor law, for those generally in work.<sup>19</sup> Others have written at length about the politics of the introduction of the 1911 scheme<sup>20</sup> and about the position of the medical profession and the role of the state in regulating private agencies in the scheme's administration<sup>21</sup>, the use of friendly society records to consider patterns of sickness over time<sup>22</sup> and with the particular issues which arose during the depression of the 1920s and 30s.<sup>23</sup> However we can also look at this early scheme to consider how the definition of 'incapacity for work' was contested,

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<sup>17</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Cd. 7687.* (London: HMSO, 1914).

<sup>18</sup> Lawrence, C. *Report of the Royal Commission on National Health Insurance Cmd. 2596.* (London: HMSO, 1926), para 17.

<sup>19</sup> Thane, P. "The Making of National Insurance, 1911." *Journal of Poverty and Social Justice* 19, no. 3 (2011): 211-19.

<sup>20</sup> Fraser, D. *The Evolution of the British Welfare State.* 4th Edition. (Basingstoke: MacMillan, 2009), Thane, P. *Foundations of the Welfare State.* 2nd ed. (London: Longman, 1996).

<sup>21</sup> Digby, A, and N Bosanquet. "Doctors and Patients in an Era of National Health Insurance and Private Practice, 1913-1938." *Economic History Review* 41, no. 1 (1988): 74-94.; Heller, M. "The National Insurance Acts 1911-1947, the Approved Societies and the Prudential Assurance Company." *Twentieth Century Brit History* 19, no. 1 (2008): 1-28.; Whiteside, N. "Private Agencies for Public Purposes: Some New Perspectives on Policy Making in Health Insurance between the Wars." *Journal of Social Policy* 12, no. 2 (1983): 165-94.; Whiteside, N. "Central Control and the Approved Societies: Access to Social Support under the Interwar Health Insurance Scheme." *Society for the Social History of Medicine Bulletin* 32 (1983): 28-31.; Whiteside, N. "Counting the Cost: Sickness and Disability among Working People in an Era of Industrial Recession, 1920-1939." *Economic History Review* XL, no. 2 (1987): 228-46.

<sup>22</sup> Eg Riley, J. *Sick Not Dead: The Health of British Working Men During the Mortality Decline.* (Baltimore: John Hopkins University Press, 1997); Harris, B., Gorsky, M., Guntupalli, A. M., and Hinde, A.. "Long-Term Changes in Sickness and Health: Further Evidence from the Hampshire Friendly Society." *Economic History Review* DO - 10.1111/j.1468-0289.2011.00607.x (2011).

<sup>23</sup> Tomlinson, J. "Women as 'Anomalies': The Anomalies Regulations of 1931, Their Background and Administration." *Public Administration* 62, no. 4 (1984): 423-37; Whiteside, N. "Counting the Cost: Sickness and Disability among Working People in an Era of Industrial Recession, 1920-1939."

the role of gendered and other social assumptions in reaching decisions and to what extent sickness benefits were conditional on claimants' appropriate behaviour.

## Sources

This article is based on an analysis of reports of appeals regarding disputes about sickness benefits between 1914 and 1920<sup>24</sup>, supplemented by evidence presented to an inquiry into the scheme in 1914<sup>25</sup> and a Royal Commission in 1926.<sup>26</sup> The two inquiries collected information from a wide range of sources and their notes of evidence provide a wealth of detail on the views of many stakeholders at the time, although the voice of the sickness benefit claimant is rarely heard. We can get somewhat closer to the claimant's perspective through challenges to refusals of benefit. Before moving on to an analysis of the appeals, the article provides a brief outline of these sources.

## Appeals to the Insurance Commissioners

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<sup>24</sup> National Health Insurance Commission (England). *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913* Cd. 7810, (London, HMSO, 1915).

———. *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913 Part II* Cd. 8040. (London, HMSO, 1915)

———. *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913 Part III* Cd. 8239, (London, HMSO, 1916)

———. *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913 Part IV* Cd. 8474, (London, HMSO, 1917).

———. *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913 Part V* Cmd. 134, (London, HMSO, 1919).

<sup>25</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act.* Cd. 7687.

<sup>26</sup> Lawrence, C. *Report of the Royal Commission on National Health Insurance* Cmd. 2596.



The original national insurance legislation stated that any dispute between members and approved societies should be dealt with internally according to the rules of the society but that appeals could be made (by either party) to the Insurance Commissioners.<sup>27</sup> Over the first ten years or so of the Act, 142 appeal cases reached the Commissioners.<sup>28</sup> The decisions in these cases were published in five reports in order that:

‘societies will welcome a series of Reports which may serve as precedents for their guidance in the future, and may at the same time illustrate the principles and procedure which should govern the decision of disputes between societies and their members’<sup>29</sup>

This educational role is clear from some of the statements made in the reports where the writers stressed what had gone wrong in a case, for example that the society’s internal appeal mechanism was inadequate or where there had been insufficient attempts to verify evidence. In other cases the statements in the reports held up Societies as exemplars of good practice in running the scheme. It is not possible to tell how far this advice was passed on or taken up by individual societies although some of the principles appear to have been incorporated into Ministry of Health guidance as the scheme progressed. Cases reaching the Commissioners had already been through one, two, or in some cases, three

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<sup>27</sup> NI Act 1911, s67 as amended by NI Act 1913 s27

<sup>28</sup> After 1920, responsibility for appeals was passed to the newly formed Ministry of Health in England and Wales and the Board of Health in Scotland. Under the new rules, dissatisfied members, who had exhausted internal dispute mechanisms, could apply to the relevant body for leave to appeal. Their case would then be passed to a ‘referee’ who would hear the case and make a decision.

<sup>29</sup> National Health Insurance Commission (England). *Reports of Decisions on Appeals and Applications under Section 67 of the National Insurance Act 1911 and Section 27 of the National Insurance Act 1913 Cd. 7810*, piii

levels of appeal but the Commissioners' hearing acted more like a first tier tribunal, revisiting questions of fact and taking evidence, than a 2<sup>nd</sup> tier Commissioners hearing of the kind to be found in the later 20<sup>th</sup> century.<sup>30</sup>

### **The 1914 report**

The National Insurance Act received royal assent in 1911 and came into operation in July 1912. The first benefits were paid in January 1913, and by August 1913 it had become clear that claims for sickness benefit were far outnumbering those anticipated by actuarial predictions. Concern was raised over these 'excessive claims', particularly in relation to women. A committee was set up to investigate this with the remit of considering:

whether the claims made upon the [insurance] funds ...were in excess of the claims, which under a proper system of administration, should have been made upon and allowed by them<sup>31</sup>

The committee heard oral evidence from 94 witnesses, from approved societies, trade unions, representatives of the medical profession, members of insurance committees, women's organisations and employer's organisations and considered 1500 pages of written evidence about the day-to-day running of the scheme. The remit of the committee, to look at 'excessive claims' was related to the original actuarial assumptions

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<sup>30</sup> In this sense, they were not the 'appellate ancestors' of later social security Commissioners, Buck, T., Bonner, D. and Sainsbury. R.. *Making Social Security Law: The Role and Work of the Social Security and Child Support Commissioners*. (Aldershot: Ashgate, 2005), p31.

<sup>31</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act*. Cd. 7687. p2.

underpinning the scheme, which had been made on the basis of claims, mainly by men, to one particular friendly society during the late 1890s.<sup>32</sup> The committee was aware that actuarial estimates could have been wrong, recognising the considerable variation between approved societies, their members and the types of occupations involved. However the committee was also concerned that there was also an element of impropriety in claims and that societies were not making sufficient effort to monitor this. So the focus of the report was with the '*proper administration*' of the scheme. The report recognised that the considerable variation in society membership led to different definitions of 'incapable of work', for example 'in relation to a man engaged in strenuous and exacting work such as coal mining on the one hand and an ordinary member of a society largely composed of sedentary workers on the other'. It noted the discretion which societies had to make these decisions, although bound by law and that they should not be 'capriciously' accepting or rejecting claims.<sup>33</sup>

The 1914 report was very much concerned with the 'excess' payments being made to women and concluded that there were several reasons for this: women's failure to understand the principles of the scheme; large numbers of 'ill paid and ill fed' women; that sickness benefits were paid in a higher proportion to women's wages than men's, thus increasing the incentive to claim; the particular ailments to which women were prone (eg in relation to pregnancy) and the difficulty of supervising women while on

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<sup>32</sup> Whiteside, N. "Counting the Cost: Sickness and Disability among Working People in an Era of Industrial Recession, 1920-1939."

<sup>33</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Cd. 7687.*, p6.

sickness benefits, as well as the possibility that women in certain occupations were genuinely ill and that it was only the introduction of the insurance scheme that had brought these levels of illness to light. The report provided detailed recommendations, including better definition of the meaning of 'incapacity for work', clarity about payments in cases of pregnancy, improved monitoring of sickness certificates, improved procedures for 'sick visitors' and the introduction of a system of medical referees to consider uncertain cases of alleged incapacity. A dissenting memorandum was included in the report, added by Mary MacArthur, a socialist feminist, representing the Women's Trade Union League. Mary MacArthur strongly opposed any aspect of the conclusions which doubted women's claims or their ability to understand the insurance principle. Her view was that any 'excess' claims by women were entirely the result of women's poor health, poverty and difficult employment conditions. Noting that many low waged women had not been voluntary members of sickness schemes before 1911, she argued that, for the first time, these women were able to afford to be ill<sup>34</sup>, a recognition that the notion of 'incapacity for work' is a social construction and is only meaningful in relation to claims for benefit. This perspective is important because it recognised the importance of social context, the gendered nature of work and the structural mechanisms behind women's claims for sickness benefits.

## 1926 Report

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<sup>34</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Cd. 7687. Memorandum by Miss Mary R MacArthur.*

By 1924, having survived the social upheavals of the First World War and its aftermath, and after several revisions to the original legislation, the principle of national health insurance was well established. However there were continuing concerns about the administration of the scheme, in particular in relation to its cost and complexity, the adequacy of its provisions and its detailed administration through the approved societies. A Royal Commission was set up with a general remit to consider the national health insurance scheme. No substantive changes were made as a result of the report<sup>35</sup> but the published report and volumes of appendices serve as valuable sources of evidence on attitudes to sickness benefit claims at this later date.

### **Analysis of appeals to the National Health Insurance Commissioners**

The reports of appeals to the Commissioners can be used in several ways: they can be used to identify broad patterns in types of appeal and categories of appellant and these are discussed below. They could also be used to look at the development of legal arguments relating to national insurance sickness benefit and at the institutional role of the Commissioners within the scheme, which has been considered in great detail for Social Security Commissioners in the post 1945 period<sup>36</sup> but which this article does not attempt. However the reported decisions can also provide us with a deeper understanding of how claims for sickness benefits were viewed at this time. Documents such as these are not neutral records of facts but socially constructed artefacts of a particular time, place and

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<sup>35</sup> Thane, P. *Foundations of the Welfare State*, p175.

<sup>36</sup> Buck, T., Bonner, D. and Sainsbury, R.. *Making Social Security Law: The Role and Work of the Social Security and Child Support Commissioners*

perspective. They are 'integral elements of policy and administration'<sup>37</sup>. They reveal meaning in the narratives of individual cases, and as Prior reminds us:

'Narratives are of interest for what they seek to describe' and they 'single out issues for mention while ignoring others'<sup>38</sup>

In many of the cases we can see the narratives of individual claims, as represented by the writers of the decisions, but also including extracts from witness statements and written evidence. These narratives construct claims in particular ways which help us to see what seemed to be important to the decision makers and other actors in the process. For example, we can see attempts by claimants to present their case as deserving and by Societies to present the opposite. It is clear that some claimants were represented by solicitors and it is quite likely, in these cases, that the information presented as evidence was influenced by the solicitor's role in 'transforming' the narrative into one which met the required legal and moral criteria.<sup>39</sup> At this early stage of the development of the welfare state there was a debate, as now, about the accessibility of the benefits system, with calls from voluntary organisations for independent advice for claimants.<sup>40</sup> Where claimants were not formally represented, it is not clear who influenced the narrative. In the decisions, although usually legalistic in their reasoning, we can see the

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<sup>37</sup> Scott, J. *A Matter of Record: Documentary Sources in Social Research*. (Cambridge: Polity Press, 1990), p84.

<sup>38</sup> Prior, L. *Using Documents in Social Research*. (London: Sage, 2003), p43.

<sup>39</sup> Conley, J. and O'Barr, W. *Just Words: Law, Language and Power*. (Chicago: Chicago University Press, 1998), p90.

<sup>40</sup> Goriely, Tamara. "Gratuitous Assistance to the 'Ill-Dressed': Debating Civil Legal Aid in England and Wales from 1914 to 1939." *International Journal of the Legal Profession* 13, no. 1 (2006), p67.

Commissioners expressing sympathy for one side or the other, using concepts of deservingness and behavioural expectations. The study of archives relating to poverty in earlier periods of history has shown that these written records of ‘small stories, micro-histories of ordinary people’<sup>41</sup> can give us insights into the strategies and discourses used by those on the receiving end of social welfare.<sup>42</sup> In the case of the early 20<sup>th</sup> century sickness scheme, these documents help us to understand how the concept of capacity for work and the conditionality attached to claims for sickness benefits were understood by the participants in the process.

### **Types and patterns of cases**

Analysis of the appeals cases was carried out using NVIVO software to identify broad patterns in types of cases as well as discursive themes in the narrative content across cases. The National Insurance Commissioners were able to deal with disputes about a range of matters. Anonymised details of cases are published in the reports. The names of approved societies are not included, so we are unable to see which particular societies were subject to (or initiators of) appeals or whether there were any patterns relating to types of society. Hearings were usually oral and could include witnesses and further statements of evidence from both sides. Parties could be (and in many cases were) represented by solicitors. Costs could be awarded and decisions of the Commissioners

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<sup>41</sup> Charlesworth, L. *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law*. (London: Routledge, 2009), p2.

<sup>42</sup> Hitchcock, T., King, P. and Sharpe, P. "Introduction: Chronicling Poverty - the Voices and Strategies of the English Poor 1640-1840." In *Chronicling Poverty - the Voices and Strategies of the English Poor 1640-1840*, edited by Hitchcock, T., King, P. and Sharpe, P.. (Basingstoke: Macmillan, 1997); Lees, Lynn Hollen. *The Solidarities of Strangers: The English Poor Laws and the People 1700-1948*. (Cambridge: Cambridge University Press, 1998).

were enforceable in court<sup>43</sup>. Disputes were usually, but not always, between individual members and approved societies. Some cases (those technical ones concerning payment of benefit while a member was in hospital) were between approved societies and local insurance committees. Table 1 shows the range of dispute type and number of cases of each type.

| Category of dispute   | Total | %  |
|---|-------|----|
| Dispute about incapacity for work   | 54    | 39 |
| Technical matter, for example, payment of benefit while a member was in hospital or disputes about contribution records                         | 49    | 35 |
| Membership, for example if a society claimed that a membership was invalid because the member had failed to disclose an existing health problem | 15    | 11 |
| Choice of doctor or complaint about doctors' services   | 10    | 7  |
| Breach of rules, for example by breaking a curfew   | 8     | 6  |
| 'Misdemeanour' while claiming sickness benefit  | 4     | 3  |
| Total   | 140   |    |

Table 1 Breakdown of appeals to Commissioners 1915-1919 by type of case

Some of these disputes, for example the technical disputes and those concerning choice of doctor do not concern questions of incapacity for work and are not of immediate interest to the research questions addressed by this article. Those concerning membership, misdemeanour and breach of society's rules are also not primarily about

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<sup>43</sup> NHIC 1915, piii.



incapacity for work. However the discussions in some of these cases are relevant to the argument in this article because often they do raise issues of moral judgement, the different treatment of men and women, and the use of medical and other evidence to make decisions. Information about claimants<sup>44</sup> in the reports is patchy – it is usually possible to determine their gender (70% were men while 30% were women) but not always possible to identify their age, occupation, health problem or marital status. This depends on the level of detail provided in the case and whether the writer of the report deemed it relevant to mention. There is a gender difference in the proportion of appeals about incapacity for work (51% of women's disputes were about incapacity for work, while only 34% of men's were, with an equal proportion of men's cases concerning technical matters) but it is difficult to make any wider claims about the meaning of these figures, given the low numbers of total appeals and the unknown intervening issues which would lead to (or prevent) a case ending up at the Commissioners.

As with appeals today, these cases almost certainly represent the tip of the iceberg in terms of numbers of dissatisfied claimants and it is difficult to know how representative they might be of some wider population. Although Digby and Bosanquet claim that there were few disputes about sickness benefit in this period<sup>45</sup>, the evidence from the witnesses to the 1914 report suggests that there may have been many dissatisfied claimants, most of whom probably did not challenge decisions of approved societies. For example, one

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<sup>44</sup> I use the term 'claimant' here to denote the insured member whose case the appeal concerned. Although in most cases appellant was the claimant, in others it was the society which appealed against a decision of an arbitrator in a lower level decision.

<sup>45</sup> Digby, A, and Bosanquet, N. "Doctors and Patients in an Era of National Health Insurance and Private Practice, 1913-1938." p.108

representative of an approved society claimed that 400 people (mostly women) had been refused benefit on the grounds that they were found fit for work. Ten of these appealed through the internal appeals mechanism but the representative did not mention any further appeals to the Commissioners. Another 720 people were referred to the medical referee, of whom 294 stopped claiming benefit and a further 63 were found fit for work<sup>46</sup>. It appears that none of these challenged the decision. The 1914 report expressed some concern that the internal appeals mechanisms were not adequate. Although there is some evidence that internal appeals mechanisms had become more standardised by 1926, the number of appeals was still very low, suggesting that people were not exercising their right to challenge refusals of benefit. Sir Walter Kinnear of the Ministry of Health noted that the numbers of appeals had fallen in recent years because of the increasing use of regional medical officers. He conceded that one reason why people did not proceed with their appeals may have been because they were 'too tired'<sup>47</sup>, suggesting that there might well have been a considerable number of unhappy claimants who were failing to have their cases considered in full, an early recognition of the issue of 'appellant fatigue' which writers on access to justice have identified today.<sup>48</sup> Never-the-less, the published reports of appeals between 1915 and 1919 provide a wealth of detail about individual cases and provide us with some insight into decision making at this individual level, as

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<sup>46</sup> National Health Insurance Joint Committee. *National Health Insurance. Appendix to the Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Volume I.* [Cd. 7688, 7689, 7690, 7691]. (London, HMSO, 1914), para 300.

<sup>47</sup> Lawrence, C. *Report of the Royal Commission on National Health Insurance Cmd. 2596 Minutes of Evidence Vols 1-4.* (London: HMSO, 1926), para 400.

<sup>48</sup> Cowan, D., and Halliday, S. *The Appeal of Internal Review: Law, Administrative Justice and the (Non-) Emergence of Disputes.* (Oxford: Hart, 2003).

well as the unwritten conditions which Approved Societies and the Commissioners applied at this stage of the scheme.

## **Conditionality and incapacity for work in the early 20<sup>th</sup> century**

This set of documents provides us with invaluable, if incomplete, evidence about the ways in which claims for sickness benefit were constructed in this early stage of its development. The article now turns to the role of conditionality in disputes about incapacity for work.

### **Definitions of incapacity for work**

The 1914 report concluded that one of the main problems with the operation of the scheme concerned the definition of ‘incapacity for work’. The report recommended that that people should be assessed against their usual occupation in the first instance, but that the definition should become narrower if it became clear that they would never be able to return to their original occupation but could retrain for another job.<sup>49</sup> However there is further evidence in the reports that defining incapacity for work involved social factors beyond the notion of usual occupation. The debate about the meaning of the term continued through the early years of the scheme and by 1926, the view of the Ministry of Health, at least, was that the problem of defining incapacity for work had been resolved.

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<sup>49</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Cd. 7687.*, p69

In his evidence to the Royal Commission, Sir Walter Kinnear, from the Ministry explained that:

general considerations have been laid down by which both doctors and societies are able to arrive pretty accurately at a proper interpretation of the phrase.<sup>50</sup>

In his use of the term ‘accurately’, Sir Walter Kinnear implied that it was possible to come to a technically correct assessment of a claimant’s incapacity for work. However, a member of the committee continued to probe this definition:

[Sir John Anderson] Could it be put like this then: that in practice as things work out ‘incapable of work’ means physically incapable of doing work which in the circumstances of the moment could be regarded as reasonably open to the insured person?

[Kinnear] that is a fair definition<sup>51</sup>

This definition has moved away from one which attempts to be technically ‘accurate’, to take account of a range of social factors, including the availability of suitable work. The definition of incapacity for work is an example of Clasen and Clegg’s ‘category’ lever of

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<sup>50</sup> Lawrence, C. *Report of the Royal Commission on National Health Insurance* Cmd. 2596 *Minutes of Evidence Vols 1-4*, para 295.

<sup>51</sup> Lawrence, C. *Report of the Royal Commission on National Health Insurance* Cmd. 2596 *Minutes of Evidence Vols 1-4*, para 296.

conditionality.<sup>52</sup> While there were no behavioural conditions attached to the statutory requirement to be ‘incapable of work’<sup>53</sup>, it is clear from the discourse in the two reports and in the cases analysed that the meaning of the term had an inbuilt conditionality, which was that claimants were responsible for ensuring their return to the labour market if at all possible. Other social factors, including gender and social background were clearly at play in both everyday decision making and in the cases which went to appeal.

### **Conditionality**

Although there were no statutory conditions attached to claims for sickness or disablement benefit (other than those concerning the provision of medical certificates) there was an underlying assumption that benefits should only be paid to those who were deserving, or to use today’s language, who accepted that they had responsibilities as well as rights. Three types of conditionality are evident: conditions concerning morality and behaviour, those concerning personal responsibility for health and conditions relating to work-seeking activities.

#### *Morality and behaviour*

Approved Societies could legitimately set their own boundaries on behaviour and some had specific concerns with temperance or religious affiliation. They could make rules which would enable benefit to be withheld (or fines to be imposed) if members were guilty of misconduct or breached behavioural expectations, although such rules had to be

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<sup>52</sup> Clasen, J., and Clegg, D. "Levels and Levers of Conditionality: Measuring Change within Welfare States." , p172

<sup>53</sup> NI Act 1911, S8(1) (c)

approved<sup>54</sup>. The rules of many of the Societies prohibited ‘immoral’ activities of various kinds such as drinking<sup>55</sup>, fighting or conviction for a criminal offence. Many also had curfew rules which prohibited claimants of sickness benefit from being out of their homes in the evenings or from leaving their area of residence. These types of rules were, in fact, encouraged and examples were provided in model rules for Approved Societies.<sup>56</sup> From the appeals decisions we can see that the Commissioners were clear that it was within Societies’ right to refuse benefit where these rules had been breached. What the Commissioners insisted upon however was that Societies had evidence to support these decisions. Some examples illustrate this.

In case 13 the rules of the society excluded from benefit anybody whose health problems were the result of ‘wilfully incurring danger, fighting, wrestling, using weapons except in self-defence, drunkenness, by immoral or disorderly conduct, or the venereal disease’.<sup>57</sup> The claimant had been refused benefit for breaching these rules. It was not clear what the specific alleged misconduct was but there was an implication that the claimant had a sexually transmitted disease. Since there was no evidence to support the allegation, the Commissioners upheld the appeal, recognising that the refusal of benefit was based on an attempt to undermine the claimant’s moral character, and said: ‘it appears to us impossible to find appropriate language in which to describe the injustice from which the

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<sup>54</sup> National Insurance Act 1911, s14

<sup>55</sup> Dependence on alcohol at this time appears to have been considered an individual moral failing rather than a medical condition. Although attitudes to drugs and alcohol may have changed somewhat in the 21<sup>st</sup> century, attempts are still being made to bring about behavioural change through conditionality in benefits, see Harris, N. "Reducing Dependency? Conditional Rights, Benefit Reform and Drugs."

<sup>56</sup> National Health Insurance Commission. *National Insurance Act 1911 Model Rules*. London: HMSO, 1912.

<sup>57</sup> NHIC, 1915, p34

[claimant] has suffered'<sup>58</sup>. This case illustrates an attempt by an approved society to apply moral conditions to a claim for sickness benefit. It is quite possible that there were more hidden accusations behind this case, perhaps based on local knowledge of the claimant, but the Commissioners were clear that, while it was not within societies' powers to refuse benefit on these grounds without clear evidence of a breach of their rules, it was acceptable to have rules relating to sexual 'misconduct'. The question of treating sexually transmitted diseases or health problems relating to abortion as evidence of 'misconduct' was addressed in the 1914 report, which concluded that the problem lay with doctors' unwillingness to provide honest certificates in these cases and that it was their duty to provide certificates 'stating expressly the nature of the illness', and that it was 'for another tribunal' to decide whether it was caused by misconduct'<sup>59</sup>, thus excusing themselves of any responsibility for considering whether benefit should be refused in these cases. Mary MacArthur, however, in her dissenting memorandum was vehement in her argument that it was wholly inappropriate to deal with these cases as misconduct rather than to focus on the health of the claimant<sup>60</sup>. By 1926 the Royal Commission had accepted that there were good public health reasons for not treating these cases as misconduct, since people should be encouraged to seek medical help as soon as possible and should not be put off by the fear of accusations of misconduct.<sup>61</sup>

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<sup>58</sup> NHIC, 1915, p34

<sup>59</sup> National Health Insurance Joint Committee *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act. Cd. 7687*, p43.

<sup>60</sup> National Health Insurance Joint Committee. *National Health Insurance. Report of the Departmental Committee on Sickness Benefit Claims under the National Insurance Act*, p82.

<sup>61</sup>Lawrence, C. *Report of the Royal Commission on National Health Insurance Cmd. 2596 Appendices to Minutes of Evidence*, para 295.

Another type of misconduct concerned drinking. In case 62, the society refused benefit to a claimant who had been involved in a fight, allegedly while drunk, arguing that, on the one hand, his accident was the result of misconduct and, on the other, that if he had not been at fault he should have instigated criminal proceedings against his alleged assailant. The Commissioners allowed the appeal, having concluded from witness statements that the claimant was not at fault in the fight.<sup>62</sup> The implication here is that it would have been reasonable to refuse benefit if the society could have proved that the claimant's injuries were the result of a drunken brawl. Case 7 concerned a woman whom the society had accused of participating in 'improper conduct' (drinking) but where no acceptable evidence was produced to support the allegation. The Commissioners implied that there may have been a case to make: 'the circumstances of the case are not wholly free from suspicion' but upheld the appeal because of a lack of evidence to support this<sup>63</sup>.

In case 77, concerning a woman accused of alcoholism and being 'an undesirable', the Commissioners found that there was insufficient evidence of this and relied instead on evidence of the claimant's upstanding moral character:

'we find a woman who has worked in only two situations for a continuous period of twenty-one years, and is able to call not only medical evidence but also evidence from her landlady, the rector of a great London parish and others to

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<sup>62</sup> NHIC, 1916, p166

<sup>63</sup> NHIC 1915, p227



...speak of their personal knowledge as to her character and habits, the case appears to us to be quite clear'.<sup>64</sup>

Here the Commissioners considered not only the lack of evidence against the claimant but also moral evidence in her favour, including her long uninterrupted record of work. We can see similar thinking in case 67, where one doctor had given evidence that the claimant was a 'malingerer'. Summing up the evidence, however, the Commissioners relied on the claimant's 'truthfulness and honesty', the fact that 'the Society's representative who had known him for 30 years spoke of him in high terms' and that 'in recent years he had only been on the Society's funds [ie claiming sickness benefit] for six weeks'.<sup>65</sup>

These cases have very little to do with 'capacity for work' but are more concerned with meeting the condition of good behaviour underlying the sickness benefit scheme. In these cases the Commissioners did not question the conditions but sought evidence of behaviour which would reveal (or question) the claimant's good moral standing. These cases show that it was considered to be appropriate to attach moral conditions to claims for sickness benefit but that, at the level of appeals to the Commissioners, these moral conditions could only be enforced if the Societies could show robust evidence of their breach. On the other hand, evidence of moral probity might be used in a claimant's favour. It is quite possible that many other claimants were refused benefit on these

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<sup>64</sup> NHIC, 1917, p203

<sup>65</sup> NHIC 1916, p175

grounds but were unable or unwilling to challenge decisions as effectively as those we see in the reported cases.

The examples discussed above concern aspects of claimant behaviour related to drinking, sexual activity and fighting. Another type of conditionality which we can see in the Commissioners' appeals concerns claimants' willingness and efforts to find work, despite their health problems. In this condition we can see an overlap with the conditions attached to unemployment benefits and a concern to prevent 'malingering' and 'scrounging'. Other writers have shown that there is a grey area today between incapacity for work and unemployment<sup>66</sup> and that the relationship between unemployment, sickness and retirement throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries closely follows labour market upheavals<sup>67</sup>. So determinations of whether a claimant is 'unemployed' or 'incapable of work' inevitably involve considerations of the wider social and labour market conditions. Cases in the appeals papers show that approved Societies would sometimes assume that a member claiming sickness benefit was malingering if she or he was clearly unemployed or finding it difficult to find work. In case 56, which concerned nine women herring workers, the Commissioners' report noted in its introduction 'work at this occupation had been very scanty and irregular, a fact not

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<sup>66</sup> Beatty, C, and Fothergill, S. *Incapacity Benefit Reform: The Local, Regional and National Impact*; Houston, D, and Lindsay, C. "Fit for Work? Health, Employability and Challenges for the UK Welfare Reform Agenda." *Policy Studies* 31, no. 2 (2010): 133-42, Webster, D., Arnott, J., Brown, J., Turok, I., Mitchell, R. and Macdonald, E.. "Falling Incapacity Benefit Claims in a Former Industrial City: Policy Impacts or Labour Market Improvement." *Policy Studies* 31, no. 2 (2010): 163-85.

<sup>67</sup> Macnicol, J. *Age Discrimination in History: An Historical and Contemporary Analysis*. (Cambridge: Cambridge University Press, 2006), p266; Tomlinson, J. "Women as 'Anomalies': The Anomalies Regulations of 1931, Their Background and Administration."; Whiteside, N. "Counting the Cost: Sickness and Disability among Working People in an Era of Industrial Recession, 1920-1939."

perhaps without significance'<sup>68</sup> and later that the cases related to 'a class of persons whose work was of so casual and irregular a nature and likely to involve claims ... not always justified by the facts or easy to supervise'.<sup>69</sup> In other words the Commissioners were concerned that people with irregular patterns of employment might be more likely to make unreasonable claims for sickness benefits, although stressing the need for evidence to support refusals. However the claimants' patchy employment records suggested that they would need to show greater efforts to look for work before being considered seriously. In relation to one claimant the report said:

'she informed us that during the last two years she has only done two weeks' work and we can feel no surprise that in the circumstances the Lodge thought fit to scrutinise very carefully her continued claim for sickness benefit'<sup>70</sup>

While in relation to another claimant in this case, the Commissioners made a sarcastic comment on the society's willingness to pay anything at all to a woman who they clearly believed was not making sufficient effort:

'the lodge in the circumstances expressed their willingness to pay a further week's sickness benefit, *which we think the Appellant was very fortunate to obtain*'<sup>71</sup>[my emphasis].

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<sup>68</sup> NHIC 1916 p150

<sup>69</sup> NHIC 1916, p151

<sup>70</sup> NHIC 1916, p152

<sup>71</sup> NHIC 1916, p152

In these cases there is evidence that both approved Societies and the Commissioners considered labour market conditions to be relevant, highlighting a concern that sickness benefit should not be paid where the claimant did not have evidence of proximity to the labour market. In case 122 the Commissioners referred to the imbalance between the claimant's payment into the scheme and what she had (so far) obtained from it. Although accepting the claimant's incapacity for work and allowing the appeal, the Commissioners said:

‘It is however proper that we should point out that the Appellant has received sickness and disablement benefit since the date of her accident for approximately 112 weeks, the equivalent of payments amounting to £31 5s in all, and this in return for contributions of less than £2. These facts ought not to be forgotten.’<sup>72</sup>

Since the scheme was based on an insurance principle and was not a savings scheme, this point seems to be irrelevant other than to underline the implied conditionality to be in paid work if at all possible. Patterns of unemployment do not appear to have been seen in structural terms but instead as evidence of individual weaknesses, supporting the argument that conditionality is concerned with individual responsibility to overcome difficulties. This individual responsibility can be seen in cases which stressed the role of

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<sup>72</sup> NHIC 1919, p292

individual responsibility in facilitating a return to work. The statement below from case 94 illustrates this:

'it is the duty of an insured person to make every effort to fit himself for work to which he has been hitherto unaccustomed, if by doing so he might in a measure regain his earning capacity' <sup>73</sup>

This condition can be seen in cases where claimants had shown that they had made this kind of effort. In case 74, the claimant's benefit had been stopped and he had managed to get a job which he had then lost as a result of his health problems. This acted in the claimant's favour, since he had shown his willingness to look for work. Emphasising the conditional nature of the benefit, the Commissioners said:

'We are also satisfied that he is not a man who would willingly continue living at the expense of another if it were possible for him to earn his own livelihood.' <sup>74</sup>

This was also evident in case 140, where the claimant had attempted to find work:

'We regard his unsuccessful attempts extending over three weeks to do the work of a 'general man' in the grocer's shop his improvement under treatment and his

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<sup>73</sup> NHIC 1917, p234

<sup>74</sup> NHIC 1917, p197

inability to do the work of the clerical training course as corroboration of our view [that he was incapable of work]' <sup>75</sup>

In Case 87 the Commissioners made an explicit reference to the claimant's responsibility for his own health. Evidence presented by the society suggested that the claimant's problems were largely the result of 'a neurotic condition' which paid work could only improve. Although recognising that the claimant's problem was at least partly a mental health issue and thus allowing the claim, the Commissioners said:

since without an effort on the [claimant]'s part, his health is not likely to improve, the Society ...would in our opinion be justified in ... notifying the [claimant] that they are prepared to give him a reasonable period in which to make the effort which the state of his health imperatively demands and which the best medical opinion open to him has prescribed and that at the end of that period his case will be reconsidered and that his benefit may cease if the effort has not been made<sup>76</sup>

These examples are illustrative of the negative effect of claimants who had apparently not made sufficient effort to meet the unwritten condition of making themselves ready for employment. This was also evident in case 93, where the claimant had lost a leg in an accident

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<sup>75</sup> NHIC 1919, p330

<sup>76</sup> NHIC 1917, p225

It is his duty to make every endeavour to fit himself to earn his livelihood in some other way and during the past twelve months he appears to have made no attempt to do this. The Commissioners have had other cases before them where insured persons have suffered even graver misfortunes and have yet fitted themselves again to become wage earners and they cannot believe that in the present case the Claimant has exhausted all the means upon him to do the same. The Commissioners desire it to be clearly understood that a Society are justified in refusing to pay benefit where they are satisfied that a member has not made every effort that is in his power to overcome a disability but is content to let matters drift and to remain a pensioner on the Society's funds <sup>77</sup>.

This can be contrasted with case 94, also concerning a man who was unable to do his former work as a result of an amputation, but where the Commissioners were more sympathetic to his position. This case included a rare example of the claimant's direct voice, where he was quoted as saying:

I am a very poor scholar, being used to nothing but hard work. I have no trade other than the honourable trade of a coal miner'<sup>78</sup>

This statement was probably not in itself enough to convince the Commissioners of his incapacity for work, but the fact that they felt it necessary to cite his words suggests that

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<sup>77</sup> NHIC 1917, p232

<sup>78</sup> NHIC 1917, p234

his claim to 'hard work' in an 'honourable trade' went some way to persuading them that he would make every effort to find alternative work if he could. However, in upholding the appeal, they went on to say that he should be given the chance to consider what work he might do and that his case 'should be reconsidered in the light of the efforts which he has made'.

These cases and the discourse of 'overcoming disability' illustrates well Paz-Fuchs' argument that conditionality in benefits is closely linked to an conception of claimants as individually responsible for, and capable of, changing their situation<sup>79</sup>. This is summed up by the Commissioners in case 82, where they argued that Societies could 'properly' set work-seeking conditions on claimants:

A society may properly notify their member that after a lapse of a specified period benefit will cease if the experiment [attempting to work] has not been tried, since it will always be open to them if satisfied that the effort has been made and had proved unsuccessful, to resume payment.<sup>80</sup>

This notion of capacity to change is also clear in case 114 which concerned a man who showed few physical symptoms and was described as being a case of 'neurasthenia', suggesting at best that he had mental health problems, and at worst that he was malingering. He had also moved house many times during the period of his claim, which

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<sup>79</sup> Paz-Fuchs, A. *Welfare to Work Conditional Rights in Social Policy*, p75.

<sup>80</sup> NHIC 1917, p212



seems to have counted against him. In evidence presented by the society, one of the examining doctors described the claimant as follows:

the member is physically sound and requires bustling treatment. Dr x saw him with me and agrees that unless the member is stimulated by stern necessity he will never try to work. At present he exhibits every symptom suggested to him and broods all day about his fancied ailments. From Dr x's note you will see that light work is recommended and in my opinion work will very soon work its own cure<sup>81</sup>

The doctor in this case clearly believed that the claimant was malingering. The Commissioners were more circumspect but dismissed his appeal, citing the frequent changes of address as evidence that sufficient effort would also improve his health. Even in cases where the Commissioners had considerable sympathy for the claimants, upholding their claims to incapacity for work, they felt compelled to remind the claimants that they had a duty to see this as temporary. One of the cases in which they showed most sympathy for the claimant (case 132) concerned a young man who had tuberculosis and had been considered unfit for war service (the fact that he had put himself forward was in itself perhaps supportive of his case). The Commissioners upheld his appeal but went on to say 'it is essential that the Appellant should have every opportunity of effecting a permanent cure as soon as possible and should not lapse into the state of a chronic invalid' .<sup>82</sup>

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<sup>81</sup> NHIC 1919, p273

<sup>82</sup> NHIC 1919, p320

Other claimants were urged to obtain and use any available equipment and adaptations which would make them capable of work. Several cases concerned ‘artificial limbs’, ‘crutches’ and ‘suitable footwear’ and the Commissioners’ views of the claimants’ capacity for work was influenced by the availability of such equipment, seeing it as the claimant’s personal responsibility to ensure that s/he had made every effort to make use of it. Case 90 illustrates this. This case concerned a man who had been disabled in an accident in which he lost both his legs. He now had artificial legs and was able to work but his claim for sickness benefit related to a period after one of his artificial legs was damaged. Although they upheld the appeal in this case the Commissioners underlined their view of claimants’ responsibilities:

The Commissioners do not wish it to be understood that a member of an Approved Society who has the opportunity of fitting himself for work by procuring an artificial leg is entitled to refrain from doing so and to claim sickness and disablement benefit for the rest of his life.<sup>83</sup>

Equally in the case of older people<sup>84</sup>, who they recognised might never be able to find work, there was an expectation that they should make some effort to support themselves. Case 138 concerned a sixty-two year old blind and partially deaf woman who had worked

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<sup>83</sup> NHIC 1917, p229

<sup>84</sup> Bearing in mind that the pension age at this time was seventy and perhaps providing us with a glimpse into the future of the treatment of older people claiming incapacity benefits as pension ages rise again in the 21<sup>st</sup> century.

as a housekeeper and who had been allowed by her employers to stay on in her accommodation in return for very light housework but without pay. The Commissioners accepted that she was 'incapable of work' in terms of the Act, commenting on her 'praiseworthy desire though not the ability to be of some to use her benefactors', However they still felt the need to suggest to her that she should show that she was willing to retrain for another occupation by contacting an institution for the blind. In this rather extreme case they commented that 'we cannot think that there is much hope' that this would lead to work but still expected effort to be shown.<sup>85</sup> In relation to another older woman (case 129), a former nurse, aged 68, who had rheumatoid arthritis, evidence for the society from a medical referee stated that 'she could do various forms of remunerative work such as light housework, a little cooking or as a needlewoman'. The Commissioners found that she was 'not incapable of work, meaning thereby remunerative work suitable for a woman of her age', although they accepted that this finding would create 'apparent hardship which in view of her disentitlement to disablement benefit may be experienced by the Appellant who after years of no doubt useful service as a nurse'.<sup>86</sup> In this decision we see a gendered conditionality in the expectation that the claimant could find work doing 'light housework' but also a recognition that she had met the unwritten conditions of working in a 'useful' profession up until this point.

It is difficult to come to firm conclusions about the gendered nature of conditionality in these cases regarding older people but we can see an example of the treatment of older

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<sup>85</sup> NHIC 1919, p325

<sup>86</sup> NHIC 1919, p304

men in Case 112. This was a group case concerning four ‘elderly’<sup>87</sup> men who had all been refused benefit, not on the grounds of capacity for work but on the grounds that the cause of their incapacity was ‘old age’. The Commissioners did not agree with the distinction (alleged by the society) that old age was not a sufficient cause of ill health, so long as it was established that they were incapable of work.<sup>88</sup> In this case there is no discussion of whether the men should make efforts to make themselves capable of work. Gendered expectations of the work that older men might do presumably excluded such occupations as the ‘light housework’ expected of women.

Women’s domestic responsibilities were a major concern in the 1914 report, leading to concerns about how to deal with women whose doctors had certified them as incapable of work but who were suspected of continuing to carry out housework. The question of women and housework continued throughout this period. Whiteside argues that the issue became even more dominant during the 1930s, citing the popular press describing married women as the worst ‘benefit spongers’<sup>89</sup>. Examples of the gendered approach to women’s domestic responsibilities appear in the appeals papers: in these cases the women had claimed sickness benefit and then had been refused or had their membership suspended for breaching the society’s rules on ‘behaviour during sickness’. Case 2 concerned a woman who was observed ‘carrying coals’, an activity which the society considered evidence of inappropriate behaviour during sickness and therefore evidence of

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<sup>87</sup> Their ages are not given but the legislation provided for benefit to be paid up to the age of seventy.

<sup>88</sup> NHIC 1919, p268

<sup>89</sup> Whiteside, N. "Private Agencies for Public Purposes: Some New Perspectives on Policy Making in Health Insurance between the Wars.", p175

capacity for work.<sup>90</sup> In case 5 a woman, employed as a baker, was refused benefit after a sick visitor had observed her performing household duties.<sup>91</sup> In case 39 the society's sick visitor's evidence contained the following statement:

‘[the claimant] was upstairs and her daughter was spring cleaning. I do not know what she was doing’ ‘raising the suspicion’ in the society representative's mind ‘that [she] was doing housework either with or without the assistance of her daughter and that this being so she could not be incapable of work’<sup>92</sup>

The Commissioners did not accept this as evidence since it ‘proved nothing one way or the other’. However in this case, and the other cases cited above, the Commissioners upheld the women's claims of incapacity only because of a lack of sufficient evidence rather than an objection to the Societies using household activities as confirmation of capacity for work. This suggests that the practice was widespread and that there may have been many other refusals of benefit based on similarly flimsy evidence which went unchallenged.

## **Conclusion**

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<sup>90</sup> NHIC 1915 p9

<sup>91</sup> NHIC 1915, p14

<sup>92</sup> NHIC 1915 p107

What this tells us is that the definition of incapacity for work in these early years of the sickness benefit scheme was contested. In making decisions about claims, approved Societies used a range of social assumptions, including the appropriateness of women continuing to carry out household tasks, the probability that those in insecure work would be more likely to claim sickness benefits and judgements about the moral probity of claimants and their perceived willingness to make themselves fit for work in the future. The two inquiries show attempts by central government to standardise definitions and interpretations of capacity for work but also show an awareness that individual approved Societies were using their own interpretations. The Commissioners, with a legalistic approach to administrative justice did not approve of unsupported assumptions about moral behaviour, instead requiring approved Societies to provide evidence to support allegations against members. While avoiding the worst practices of some of the individual Societies in making moral judgements, the official inquiries and Commissioners' decisions never-the-less show evidence of moral assumptions about appropriate behaviour and about the conditionality inherent in the scheme. There are examples of conditionality in relation to behaviour, efforts to 'overcome' disabilities and willingness to look for or retrain for work and different expectations of men and women and of those in insecure employment. These suggest that despite attempts to objectify assessments of 'capacity for work', there were considerable social and moral elements in these assessments. However this approach to decision making took place at the appeal level and it looks fairly likely that few unsuccessful claimants used this mechanism to

challenge refusals of benefit. The rest would have been susceptible to the more morally charged decision making mechanisms of the approved Societies.

The history of social security legislation on incapacity for work throughout the 20<sup>th</sup> century, and into the 21<sup>st</sup>, has been one of successive attempts to clarify the meaning of the term 'incapacity for work'. At the same time, the way in which evidence of this is collected and used also relies on morally weighted judgements about appropriate behaviour and unwritten assumptions about the work-seeking conditions to be applied in decisions about sickness benefits. While we might not expect to find examples of the more extreme moral or gendered judgements occurring in bureaucratic decision making today, socially constructed notions of willingness to work and gendered expectations still exist. Other writers have discussed conditionality in unemployment benefits in the early years of the welfare state and have pointed to increased conditionality in incapacity benefits today. In this article I have argued that conditionality in incapacity benefits is not new. Recognising that it has a long history can help us to understand the debate in welfare policies today.